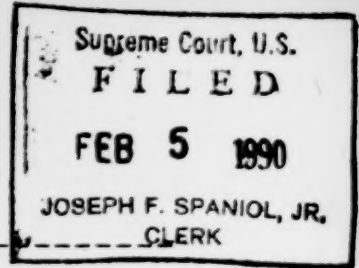


89-1260



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER 1989

DENNIS R. BAUR

VS.

UNITED STATES OF AMERICA

On Writ of Certiorari from the
United States Court of Appeals for the
Sixth Circuit

Petition for Writ of Certiorari

Dennis R. Baur (Pro se)
32567 Mason Ct.
Westland Michigan
48185



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STATEMENT OF ISSUES
PRESENTED FOR REVIEW;

(1) The District Court erred in dismissing the original suit brought before it without allowing, Dennis R. Baur, Plaintiff, appearing Pro se, a full hearing of the facts involved in this matter.

(2) Dennis R. Baur, a natural person and citizen, of the United States, does not automatically come, by reason of his existence, within the purview of Internal Revenue Code. A Natural Person must be brought within the regulatory authority of the Internal Revenue Code by some culpable act.

(3) No taxable event or activity, has been identified by either the defendant's agent, Internal Revenue Service, nor any court of competent jurisdiction, which would bring Dennis R. Baur within the regulatory authority of the Internal Revenue Code.



(4) Internal Revenue Code does not, and can not, apply to any, citizen or natural person, who is a nontaxpayer.

(5) A private corporation, third party record keeper, has no authority to release information relating only to a, natural person and citizen, who is a nontaxpayer, to the Internal Revenue Service. The Internal Revenue Service administrative summons can only be used to gather specifically defined and narrowly limited information regarding a natural person.

(6) The Internal Revenue Service has no means other than lawful order of a court, of competent jurisdiction, to gain access to the records, held by a third party record keeper, which relate only to a nontaxpayer.

(7) 15 USC 1681(b) and 15 USC 1681(f), known as the Fair Credit Reporting Act; was enacted specifically to



protect a citizen and natural person, from unreasonable searches and seizures, of papers and effects and prohibits, defendants agent, Internal Revenue Service, from obtaining information relating to individuals who are nontaxpayers.

(8) Internal Revenue Code Section 7602(a) and 26 USC 7602(a), Internal Revenue Service's administrative summons authority, do not repeal, suspend, supersede, or in any way negate any portion of 15 USC 1681(b) and 15 USC 1681(f). Therefore, no proper authority existed to allow the release of Plaintiff's records.

(9) If Internal Revenue Code 7602(a), 26 USC 7602(a), is applicable to obtain credit records, relating only to a natural person and citizen, who is not a "taxpayer" and as such is not subject to regulation under Internal Revenue Code;



Then, application of this statute comes into direct conflict with the First, the Fourth, the Fifth and the Fourteenth Amendments to the United States Constitution.

With regard to question number 9, above, presented for review before the Court, Petitioner, having raised the question of the Constitutionality of an Act of Congress with this question, and in conformity to Rule 29.4.(b) of the Rules of the Supreme Court of the United States, makes the following statement;

28 USC 2403(a) may be applicable; and pursuant to 28 USC 451, Petitioner further states, that to the best of his knowledge, no court has, pursuant to 28 USC 2403(a), certified to the Attorney General the fact, that the constitutionality of such Act of Congress was drawn in question.

STATEMENT OF GROUNDS

The Consumer Reporting Act
15 USC 1681 et seq.

The Petitioner moves the
Honorable Court for writ of Certiorari on
the grounds that his Constitutional right
to privacy, as guaranteed by the Fourth
Amendment to the United States
Constitution, and as further defined by 15
USC 1681 has been violated, and that he
has been denied the due process of law as
guaranteed by the Fifth and Fourteenth
Amendments to the United States Consti-
tution.

The order of the United States
Court of Appeals, dismissing this action,
(89-1093), in that court was issued on
November 13, 1989.

The Court has jurisdiction over this
matter under provisions of ; The Consumer
Reporting Act 15 USC 1681 et seq.

Specifically Subsection 602(a), (b) and Subsection 604 and 608.

**SUBSECTION 602. FINDINGS AND
PURPOSE [15 USCA 1681]**

"(a) The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumers right to privacy.

(b) It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for

consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of the title."

**SUBSECTION 604. PERMISSIBLE PURPOSES
OF REPORTS [15 USCA 1681b]**

"A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe-

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or

other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer."

**Subsection 608. DISCLOSURE TO
GOVERNMENTAL AGENCIES
[15 USCA 1681f]**

"Notwithstanding the provisions of section 604, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former address, place of employment, or former place of employment, to a governmental agency."

..(f) constitutional provisions
United States Constitution
Article III
Section 2.

" The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;...."
(In pertinent part)

**United States Constitution
Article VI
Paragraph 2**

" This Constitution, and the laws of the United States which



shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any state to the Contrary notwithstanding."

United States Constitution
Article [IV]
(FOURTH AMENDMENT)

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution
Article [V]
(FIFTH AMENDMENT)

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any

criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

United States Constitution
Article [XIV]
Section 1.
(FOURTEENTH AMENDMENT)

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This matter is brought before the honorable Court by Dennis R. Baur, Plaintiff-Appellant, to defend and protect his rights as a citizen of the United States as guaranteed by the Federal Constitution.

Appellant informs the Court, that on February 16th, 1988, Appellant had a meeting with representatives of the Internal Revenue Service, to discuss what they characterized as his "tax liability". Appellant was aware that he had no tax liability, and informed the Internal Revenue Service that he would not waive any of his rights as secured by the United States Constitution.

Appellant was notified by mail on February 26th, 1988, that the Internal Revenue Service had served upon TRW Corp., a third party record keeper subject to regulation by 15 USC 1681, a Form 2039, Administrative Summons, requesting;

"Documents regarding the credit history of Dennis R. Baur (SSN: 362-52-2795), 34998 Currier, Wayne, MI 48184, for the years 1982 through 1987."

Appellant notified TRW Corp., on February 26th, 1988, by mail, that the information requested by the Internal

Revenue Service was not required to be released. Further, that they were not authorized to release any information not specifically required by law.

Appellant was notified by TRW Corp., by mail, on March 4, 1988, that the information requested would be released. Appellant, acting Pro se, being unable to obtain services of a competent attorney to assist him, and having no other recourse, sought the protection of the Courts and filed a complaint, against TRW Corp., for declaratory and injunctive relief in the United States District Court Eastern District of Michigan Southern Division, on March 4, 1988, Docket No. 88CV70881DT, and a hearing on a motion for a temporary restraining order was held on March 11, 1988. Appellant was served a copy of the reply brief filed by Trw Corp., at 1:45 p.m., in the Court room while waiting for the hearing to be



called. The hearing was called at 2:00 p.m. Appellant was not explained his rights by the Court and the hearing was conducted. Appellant was not given sufficient time to read or understand Defendants reply nor allowed to place his objections on the record and the matter was summarily dismissed with the Court incorrectly, advising Appellant that he should have filed suit against the Internal Revenue Service, in the form of a petition to Quash the summonses. An order of the Court dismissing the case was issued March 15, 1988.

*(Note, The above information is included only as back ground information in an attempt to relate to the Court the chronological events which predicated the filing of this Petition for writ of Certiorari. Appellant did subsequently file Petition to Quash as the Court had instructed, which is the basis of this



appeal now brought before the Court.)

The petition to quash was filed in the District Court On March 14, 1988, docket number, 88CV70973DT. The petition to quash was subsequently amended by motion filed with the court on May 9,

1988. Defendant filed a motion to dismiss on May 12, 1988. Judgment by the Court issued as an order on June 14, 1988, dismissed the Petition to quash. On June 24, 1988 a motion for rehearing was filed with the Court. On August 11, 1988 a notice of appeal was filed. On November 7, 1988 an order denying a rehearing was issued. On December 1, 1988 an order dismissing the first appeal for lack of jurisdiction was issued.

Appellant re-filed the notice of appeal, in regard to this matter, in the Appeals Court for the Sixth Circuit Court of Appeals on January 5, 1989 the case was assigned Appeals Court Docket no. 89-1093



on January 23, 1989, and the Pro se Appellant's Brief was filed and received by the Court on February 21, 1989. An order affirming the judgment of the District Court was filed November 13, 1989, and was issued as a mandate on December 14, 1989.

This order and mandate is the subject matter of the review sought in this case.

RULE 14(i),

JURISDICTION

1. This action was originally brought in the Federal District Court under Article III of the United States Constitution and under 26 USC 7701(a)(14) and 26 USC 7609(b). The Petitioner further claimed jurisdiction under Article 4, Article 5 and Article 14 of the Amendments to the United States Constitution.

2. The District Court had jurisdiction



over this action pursuant to FRCP 65(b).

3. Petitioner was and is a citizen of the United States of America, State of Michigan, County of Wayne, residing, at the time this action was filed, at 32566 Mason Ct., in the City of Westland, and is now residing at 32567 Mason Ct., in the City of Westland.

4. Petitioner brought this action individually.

5. Defendant, United States of America and its agent, Internal Revenue Service, is subject to the authority of this Court under the United States Constitution and applicable federal statutes.

AMPLIFICATION OF ARGUMENT
FOR WRIT
Rule 10.1.(c)

"When a state court or federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this court."

Petitioner has previously raised the



question of jurisdiction, by the Internal Revenue Service over him, before both the District Court and the Appeals Court.

Petitioner showed to the Court in his

"MOTION AND BRIEF TO AMEND PETITION TO

QUASH" filed on May 9, 1989, at pages 4

and 5:

"(T)here has been no showing by Respondent that Petitioner is a taxpayer. It is clear that the Respondent must show that Petitioner is a taxpayer as defined by IRS code in order to bring Petitioner within the scope of IRS's authority. Petitioner can clearly show that he is a "nontaxpayer" as described by the court in Economy, supra, nt.3, at 590 and is therefore not subject to regulation by the IRS and IRS codes can not be used to summons any records relating to him. Petitioner offers his signed declaration, attached hereto and marked Exhibit "R" affirming that he is not a "tax payer" as defined by IRS regulation. Petitioner is not a "tax payer" and therefore is not subject to IRS regulation thereby making the administrative summons issued by Respondent IRS void."

Defendant is fully aware, although it fails to recognized that the



Administrative Summons must be pursuant to duly authorized authority in order for it to issue. The District Court and the Appeals Court have consistently ignored, and failed to address this argument. The Internal Revenue Service has never claimed or offered any evidence to show that Petitioner could be a "taxpayer", within the definition of the Internal Revenue Code, which would be required to make him subject to regulation under the Code. The Courts have refused to recognize the argument that the statutory authority conferred on the Internal Revenue Service by IRC Section 7206(a), to summons the records of a taxpayer, is limited, and does not extend to nontaxpayers. Internal Revenue Code Section 7206(a) does not, and can not apply to a natural person and citizen who is not possessed of the requisites of a taxpayer. The District Court and Appeals Court in their opinions

have improperly concluded and postulated that the relief offered to taxpayers through 26 USC 7609, being the Petition to Quash; is the only relief available to a, citizen and natural person. The error being, that a, citizen and natural person, who is a nontaxpayer, and as such is not subject to application and enforcement of the administrative summons. The administrative summons can apply only to taxpayers, as defined under the Internal Revenue Code. It is important for the Court to note that in prior cases United States courts have ruled:

"The revenue laws are a code or system in regulation of tax assessment and collection. **THEY RELATE TO TAXPAYERS, AND NOT TO NONTAXPAYERS.** The latter are without their scope. **NO PROCEDURE IS PRESCRIBED FOR NONTAXPAYERS,** and **NO** attempt is made to **ANNUL** any of their **RIGHTS** and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the **SUBJECT** nor the **OBJECT** of the revenue laws"

Long v. Rasmussen,
281 F.236, at 238. (1922);
Economy Plumbing and Heating v. U.S.,
470 F. 2d. 585, at 589. (1972)

The United States Supreme Court further recognized the distinction between taxpayers and nontaxpayers in the Economy case at Note 3:

"3. The term "taxpayer" in this opinion is used in the strict or narrow sense contemplated by the Internal Revenue Code and means a person who pays, overpays, or is subject to pay his own personal income tax. (See Section 7701 (a)(14) of the Internal Revenue Code of 1954.) A "nontaxpayer" is a person who does not possess the foregoing requisites of a taxpayer."

Economy, supra,
nt.3, at 590.
(Emphasis added)

The District Court and Appeals Court have failed to assist Petitioner in the protection of his Constitutional Rights. The United States Supreme Court has consistently held that the enforcement of an administrative summons, which has been challenged, can only be enforced through the courts.

In, U.S. vs. Bisceglia, 420 U.S. 141, the Supreme Court said:



"Substantial protection is afforded by the provision that an Internal Revenue Service Summons can only be enforced by the courts. 26 U.S. Section 7604(b) Reisman vs. Caplain, 375 U.S. 440 (1964). Once a summons is challenged it must be scrutinized by a court to determine whether it seeks information relevant to a legitimate investigative purpose and is not meant "to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation."

It is apparent from this opinion that the court is recognizing the Fifth Amendment guarantee of due process, when it states that "the summons can only be enforced by the courts." The court is recognizing that the administrative summons which is in its nature, civil process, and carries no weight of its own, can only be made enforceable by court order. In reference to the above subsection we find in, 15A Am Jur 2d, footnote 22. 15 USCA 1681f., which says;

"Section 608 of the Act (15 USCA 1681f) allows disclosures of limited portions of the reports-essentially identifying information-to governmental agencies unable to qualify under any of the subsections of section 604 of the Act (15 USCA 1681b)."
Retail Credit Co., Miami Branch
Office, 169 App DC 271, 515 F2d 988.

"The clear implication of 15 USCA 1681f is the Act is applicable to all governmental agencies, including Internal Revenue Service, and to extent government agency seeks consumer report in hands of consumer reporting agency, it must obtain court order therefore pursuant to 15 USCA 1681b or otherwise comply with such section."

United States v. Puntorieri
 (DCNY) 379 F Supp 332."

From the Courts opinion in the Puntorieri case it is obvious the only control that the Internal Revenue Service can exercise over an individual is that granted to it, by the Congress through the Internal Revenue Code or that specifically ordered by a court pursuant to law.

Internal Revenue Code is narrowly and specifically applicable to taxpayers only. Petitioner is not a taxpayer as



defined by Internal Revenue Code, and while Petitioner does not have to prove that he is not within the purview of Internal Revenue Code there has been no claim or offer of proof by the Defendant-Appellee, or its agent the Internal Revenue Service that Petitioner could even be considered a taxpayer. Petitioner is aware that the Defendant-Appellee, and its agent the Internal Revenue Service has never made any determination as to the Petitioners status as a taxpayer. Only after such a determination were made could the Internal Revenue Service claim any regulatory authority over Petitioner under Internal Revenue Code 7602(a). Lacking such authority the Internal Revenue Service can not use its administrative summons procedure to request information from a third party record keeper. Further it is the record keepers responsibility, under the Fair Credit



Reporting Act, to know and protect the citizens rights.

Petitioners Constitutional rights have been violated by Internal Revenue Service's abuse of its administrative summons authority.

While the Internal Revenue Service may exercise authority over tax payers, it does not follow that it would therefore naturally have authority over any citizen and natural person as well.

CONCLUSION

Petitioner has been damaged by Defendant-Appellee's improper and abusive use of the administrative summons authority of the Internal Revenue Service.

Dennis R. Baur recognizes the distinctions which are inherently possessed, of, a natural person and citizen, such as the rights secured by the Constitution. Petitioner is also fully aware of the lack of these rights and



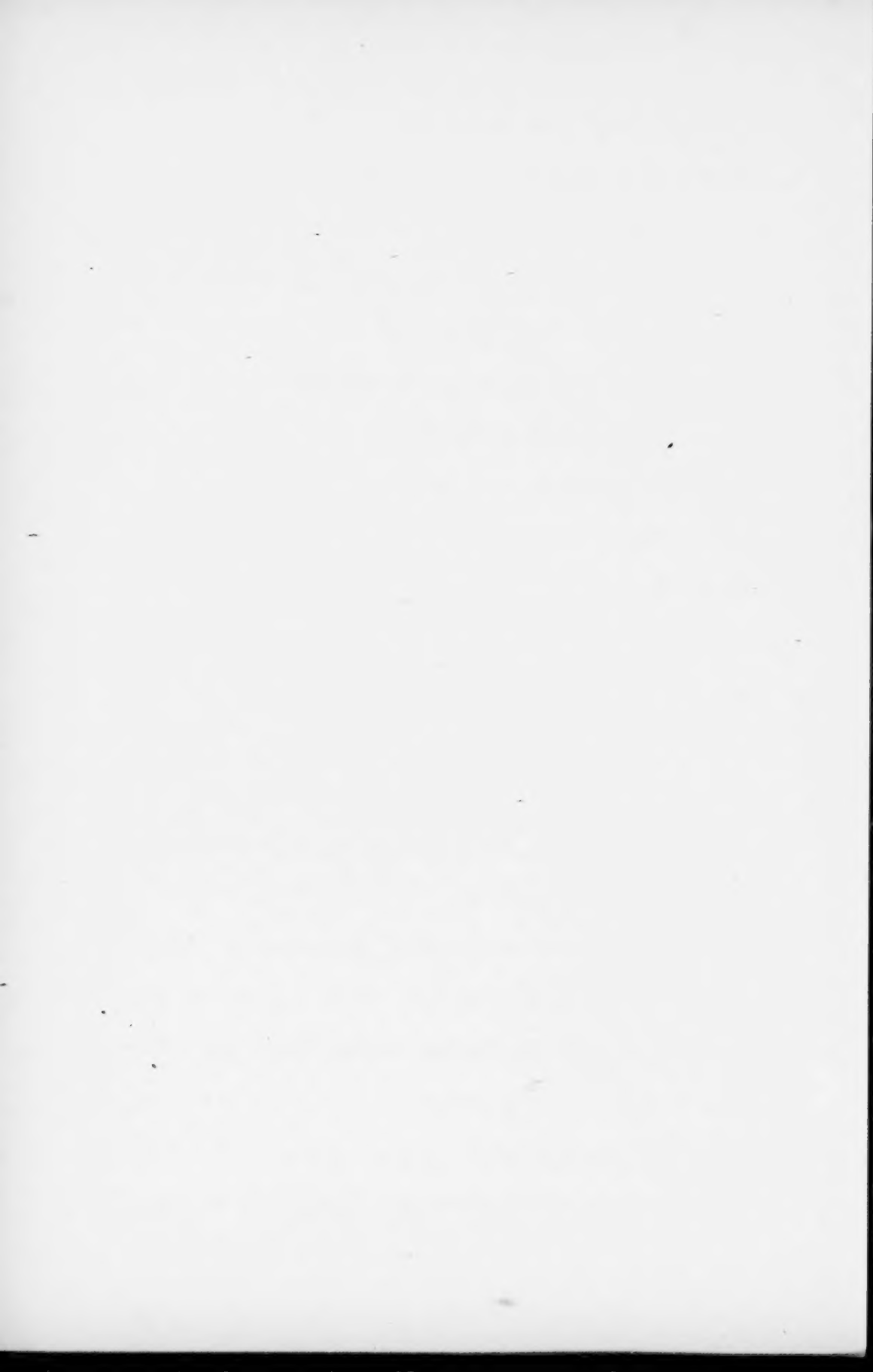
protections on the part of non-entities, such as corporations and other artificial beings.

While these non-entities are taxpayers, by the fact of their existence, which they owe to society and the government. The same can never be true of, a natural person and citizen who owes nothing to the government for his existence. It is a well settled point, that in order to bring a, natural person and citizen within the Internal Revenue Code definition of a taxpayer, and cause him to be subject to regulation, there must be a culpable act which can be articulated, expressed and defined. The earning of a living which is a natural right can never be such a culpable act. No such culpable act has been claimed, expressed or implied, with regard to Appellee. The Internal Revenue Service has never made any claim that Dennis R.



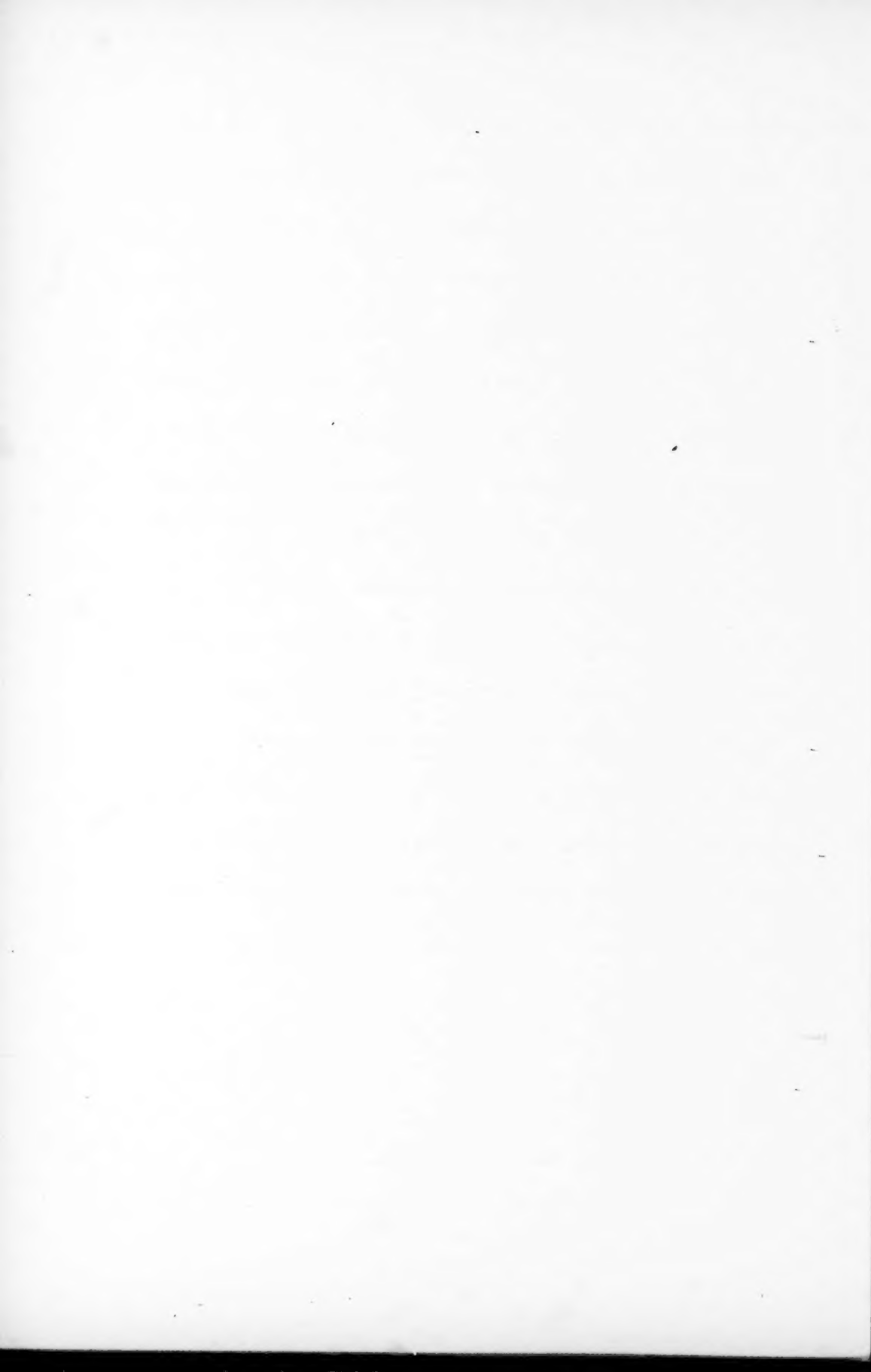
Baur has any tax liability. The District Courts and Appeals Court have made no ruling of any liability for an income tax on the part of Appellee. Only through the, inference of authority, by the improper use of the administrative summons, has the Defendant gained access to information which is neither needed nor permitted by law. A natural persons most basic rights, which were so eloquently expressed in the Declaration of Independence, can never be the subject of taxation. Only very specifically defined and statutorally controlled sources of revenue come within the regulatory authority of the Internal Revenue Code.

WHEREFORE, Petitioner can not be made whole again without the intercession of this Court and an order under seal of this Court directing that all information gathered through the use of the administrative summons be returned to the



Appellee forthwith, and further specifically acknowledging Appellee's status as a nontaxpayer as defined by Internal Revenue Code; and that as such, he is not subject to regulation under same. Further, Petitioner request that the Court award to him an amount of money equal to Petitioners expenses in bringing this matter on before the Court.

Petitioner, hereby, moves the Honorable court to Make a finding on the merits of this case, and correct the errors made by the lower Courts and restore Dennis R. Baur's full rights as a citizen, or in the alternative to issue a writ of Certiorari so oral arguments can be made.



For these reasons this petition for writ of certiorari is brought before the Court.

Respectfully submitted for the Court's consideration this 1st day of February 1990.

Dennis R. Baur
DENNIS R. BAUR (Pro se)
32567 Mason Ct.
Westland Mich. 48185



APPENDIX

COPY OF ORDER OF THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT, ISSUED
AND FILED NOVEMBER 13, 1989, LEONARD
GREEN Clerk

Docket No. 89-1093

United States Court of Appeals
for the Sixth Circuit

Dennis Baur

Plaintiff-Appellant,

v.

ORDER

UNITED STATES OF AMERICA

Defendants-Appellees

Before: KRUPANSKY and NELSON Circuit
Judges; and BROWN Senior Circuit
Judge.

This case has been referred to a
panel of the court pursuant to Rule 9(a),
Rules of the Sixth Circuit. Upon
examination of the record and appellant's
brief, this panel unanimously agrees that
oral argument is not needed. Fed. R. App.
P. 34(a).

Dennis R. Baur appeals from the
district court's judgment granting the
government's motion to dismiss his



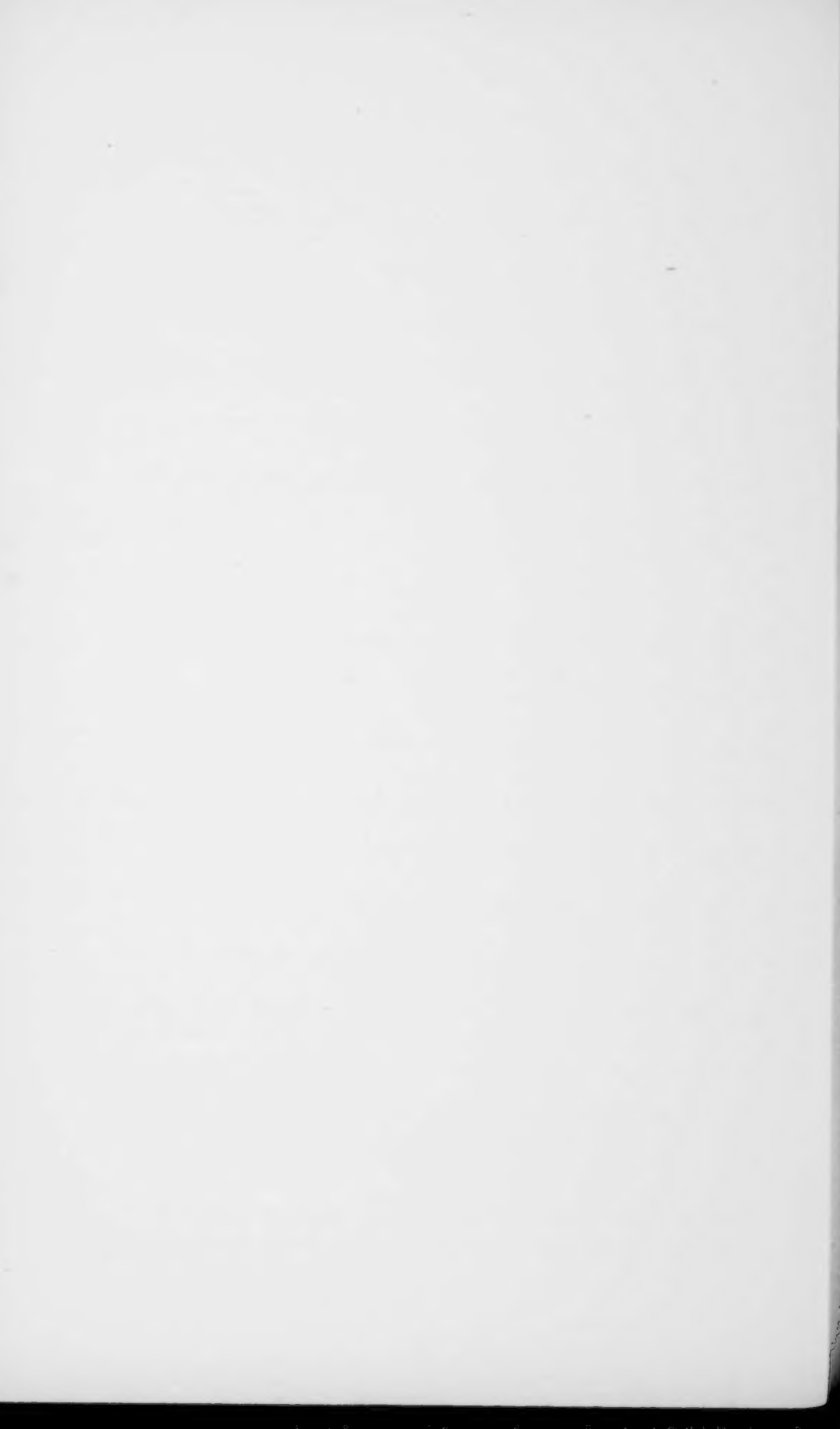
petition to quash summonses by which the Internal Revenue Service (IRS) sought to obtain information from several institutions that possess or have control of Baur's financial assets. The appellee has filed a motion to dismiss this appeal as moot, the IRS having obtained compliance with the summonses Baur sought to quash.

Because the IRS has obtained compliance with the summonses, there is no longer any live controversy between the parties. Accordingly, the appeal is moot. See United States v. Aquinas College Credit Union, 635 F. 2d 887, 888 (6th Cir. 1980), cert. denied, 450 U.S. 1042 (1981)

The appellee's motion to dismiss the appeal as moot is granted. Rule 9(b)(6), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
Leonard Green
Clerk

THE FORGOING ORDER WAS SUBSEQUENTLY
ISSUED AS MANDATE: Dec. 14, 1989 COSTS:NONE



COPY OF THE ORDER OF THE UNITED STATES
DISTRICT COURT EASTERN DISTRICT OF
MICHIGAN SOUTHERN DIVISION, ISSUED AND
FILED JUNE 14, 1988

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Dennis R. Baur,

Petitioner,

v. Civil Action No.88-CV-70973

HON. JULIAN ABELE COOKE, JR.

UNITED STATES OF AMERICA,

Respondent
-----/

JUDGMENT

On this date, the Court entered a final Order which granted the Government's Motion to dismiss in this cause.

Accordingly, a judgment shall be entered in favor of the Defendant, United States of America, and against the Plaintiff, Dennis R. Baur.

JULIAN ABELE COOK, JR.
U.S. District Court Judge

Dated: JUN 14 1988
Detroit, Michigan



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Dennis R. Baur,

Petitioner,

v. Civil Action No.88-CV-70973

HON. JULIAN ABELE COOKE, JR.

UNITED STATES OF AMERICA,

Respondent
-----/

ORDER

On March 14, 1988, the Plaintiff ,
Dennis R. Baur, initiated proceedings in
this cause by filing a Petition to Quash
Summons against the the Defendant, United
States of America.[1] In his Petition,
Baur cited the issuance of a summons by
the Internal Revenue Service (IRS) which
seeks to obtain information from several
institutions that possess or have control
over records relating to his personal
finances.[2]

In his Petition, Baur, who has been
designated as an "illegal" tax protester



by the IRS, [3] complains that the summons have been initiated in "bad faith"[4] in violation of his "First Amendment rights of expression and association." [5] He believes that this action by the IRS is evidence that he "has been targeted...for criminal prosecution by the IRS." [6] He asks this Court to quash all of the summons which were identified by him in his Petition or, in the alternative, "an in camera inspection of the records to preserve taxpayer's Fourth and Fifth Amendment rights, or to grant petitioner a condition of suitable immunity, or to order a show cause hearing at which time he can exercise his right of discovery and more full (sic) his objections to this IRS summons." [7]

On April 13, 1988, Baur filed a Motion for Default Judgment, citing the failure of the Government to file an answer as required by Fed. R. Civ. P.



12.[8] On may 9, 1988, the Government filed a Motion to Dismiss, contending that Baur had failed to state a claim upon which relief may be granted. Fed.R. Civ. P.12(b). Specifically, the Government asserts that (1) Baur "has failed to allege any facts showing that the IRS issued the summons en bad faith,"[9] and (2) the "summonses are not violative of [Baur's] Fourth or Fifth Amendment rights." [10]

On the same date, Baur filed a "Motion and Brief To Amend Petition to Quash," claiming that his "original petition ... may have been incomplete." In his "amended" Petition, [11] he also asks this Court "to cease and desist from further harassment of [him and]...to grant an amount of money equal to [his] actual costs in bringing this suite (sic) before the Court."

On may 19, 1988, Baur filed his



"Answer to Motion to Dismiss," in which he denies being "engaged in any revenue taxable activity [or coming] within the parameters of the Internal Revenue Code." [12] Thus, Baur argues that he is "not subject to regulation by the Internal Revenue Service and is entitled to protection by the Court, from enforcement of the Internal Revenue Service summonses issued by...[the IRS]." [13]

This Court, in analyzing the instant motion, accepts Baur's representation as being correct and concludes that the Government's position does have merit.

Prior to March 14, 1988, the IRS issued summonses to seven entities, [14] all of whom were believed to have had fiscal information relating to Baur, Elissa L. Baur and Karen R. Baur. [15] From a careful reading of all of Baur's pleadings, it appears that his underlying arguments are that he (1) is not a

taxpayer, and (2) objects to being described as as an "illegal tax protester."

Every summons, which is issued by the IRS, must be made in good faith.[16] The Government does not have the burden of proving a prima facie of good faith. That obligation is placed on the taxpayer. Prior to 1982, a taxpayer, who believed himself to be aggrieved by an improperly filed summons had the right to request the third party record keeper not to comply with the request of the IRS. However, the Second Session of the Ninty-Seventh Congress substantially modified this procedure with passage of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

The Government correctly notes that "[t]he replacement of the 'stay of compliance' with the 'proceeding to quash' was intended to provide some assurance



that taxpayer interference with legitimate law enforcement efforts would be based on proper grounds and not merely interposed on frivolous grounds resulting in fruitless delays...."[18] In support of its position, the Government cites Godwin v. U.S., [19] in which the court expanded upon TEFRA modifications:

Section 331 of TEFRA, 96 Stat. at 620, amended 26 U.S.C. 7609 to reverse the format of enforcement proceedings concerning third-party recordkeepers summonses. Prior to TEFRA, when the IRS summoned records of a taxpayer from a "third-party recordkeeper," such as a bank or securities broker, the affected taxpayer could stay the recordkeeper's compliance with the summons simply by notifying the recordkeeper in writing that the taxpayer did not wish the recordkeeper to comply with the summons.

The Senate Report expressly stated that this modification of the format of summons enforcement proceedings was not to affect the substantive laws of summons enforcement, except as amended in Sections 332 [now codified (sic) at 26 U.S.C. 7609(i)] and 333 [now codified at 26 U.S.C. 7609(b) and (c)] of TEFRA. See S.Rep.



[No.] 494, [97th Cong., 2d Sess. 281] at 283, reprinted in [1982] U.S. Code Cong. & Ad. News 781, 1029. It is therefore clear that, except for specific changes, the pre-amendment law concerning the nature of the summons, the government's burden, the summary nature of the proceedings, the concomitant general unavailability of discovery, and the strict standards for stay of the Court's final judgment pending appeal are to remain unchanged. Id. at 283, 285, reprinted in U.S. Code Cong. & Ad. News 781, 1029-31. For this reason, the new form of proceeding does not affect the substantive law to be applied. The proceeding remains summary in nature, and the summons remains akin to a grand jury subpoena. See United state v. Cortese, 614 F.2d 914, 920 (3d Cir. 1980). Consequently, the summons power should continue to be liberally construed in light of the purposes it serves. See United States v. Euge, 444 U.S. 707, 714-16, 100 S.Ct. 874, 879-881, 63 L. Ed.2d 141 (1980). [Footnotes omitted.] [20]

The responsibility for establishing bad faith, or the absence of good faith, rests upon Baur. His assertion of bad faith is based upon the IRS' characterization of him as a "tax



protester." Baur's contention that this identification constitutes bad faith is not a valid argument.[21] While this identification - even if it is incorrect - may subject an individual to great scrutiny, that fact alone does not constitute evidence of bad faith. Hence, an examination of his Petition, as amended, reflects a failure by Baur to allege a sufficiency of facts which would set forth a cause of action against the IRS.

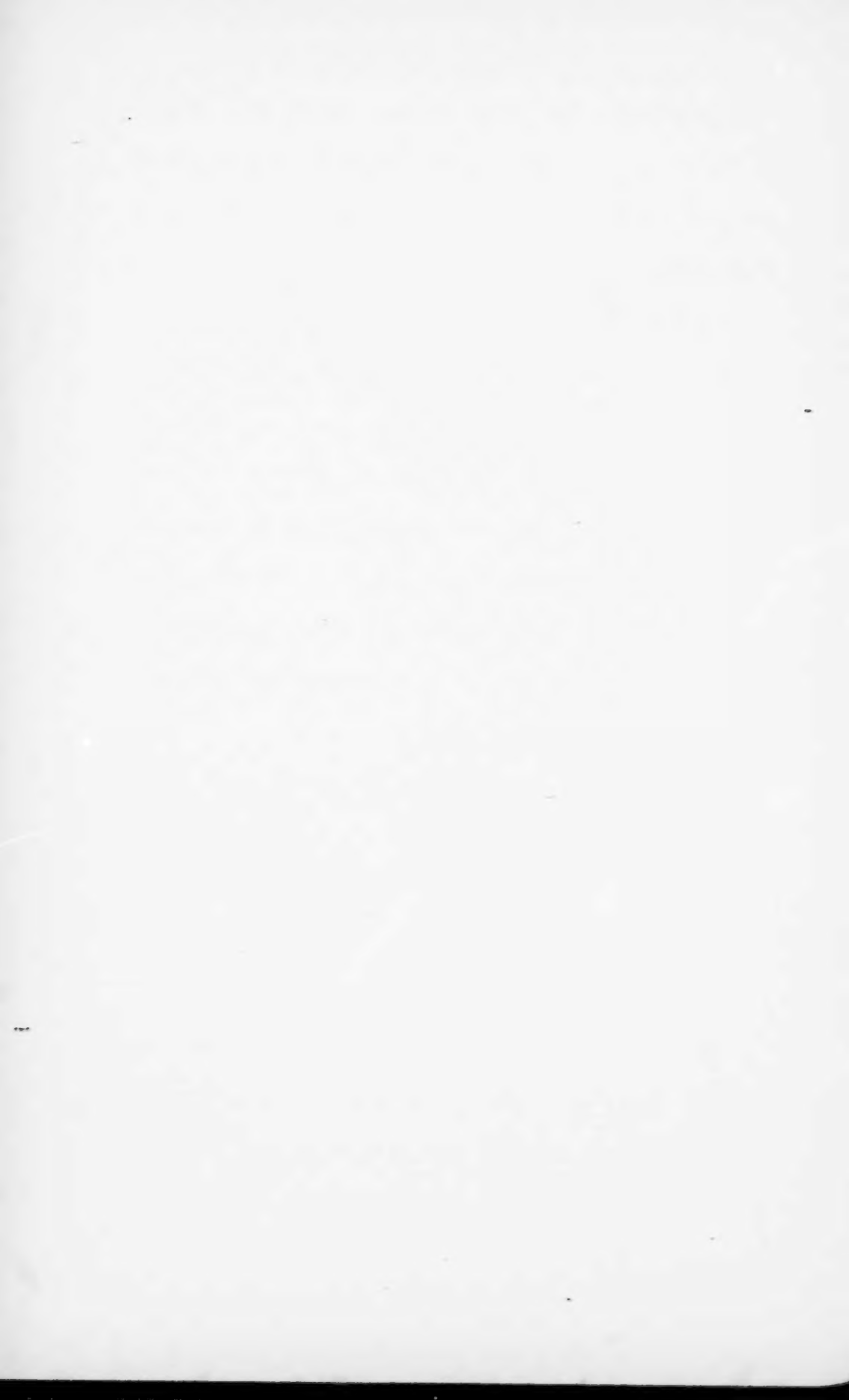
Baur has also asked this Court to conduct an in camera inspection of the documents, which are the subject of the seven summons under scrutiny in this cause. This, he believes, will protect his Fourth Amendment rights against an illegal search, as well as his Fifth Amendment rights against self incrimination. This Court will decline Baur's request. Both of his contentions



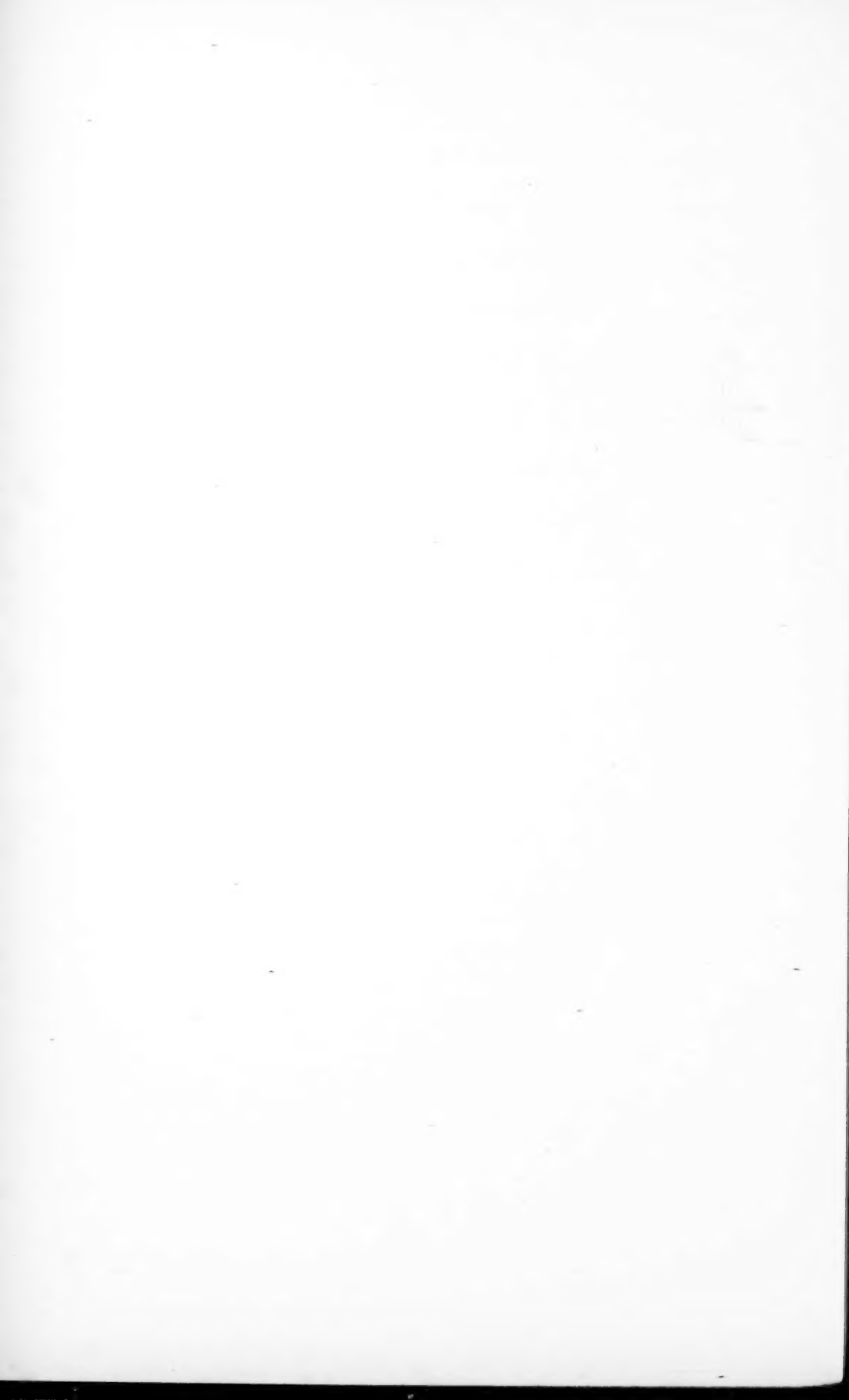
are flawed, in that they lack any legal authority. The cases which have been cited by him in support of his propositions, are inapposite to this controversy and, as a result, are of no assistance to the Court on those constitutional issues.

With regard to Baur's constitutional concerns(sic) of an unreasonable search, the Supreme Court in U.S. v. Powell [22] has rejected arguments which challenged the efficacy of a summons on Fourth Amendment grounds. [23]

The Fifth Amendment argument by Baur is equally defective in that this constitutional guarantee is a personal privilege and does not extend to information which may be obtained through a third party. In Couch v. U.S., [24] the court stated that "[t]he Constitution explicitly prohibits compelling an accused to bear witness 'against himself;' it



necessarily does not proscribe incriminating statements elicited from another." [25] The Government has also cited a series of cases which correctly point out that "the Fifth Amendment right of a taxpayer are not violated by the enforcement of an Internal Revenue Service summons directed to a third-party bank possessing relevant records." [26]



Therefor, this Court concludes that the several requests by Baur, as set forth in his Petition to Quash, as amended, must be rejected. Moreover, this Court declines to quash, or to interfere with the demands which have been set forth within the summonses that are the subject matter of the instant litigation. Hence this Court will grant the Government's Motion to Dismiss and, in so doing, in so doing, will enter an order of dismissal in its favor. This constitutes a final order in the cause.

IT IS SO ORDERED.

JULLIAN ABELE COOK, JR.
United States District Judge

Dated: JUN 14 1988
Detroit, Michigan



FOOTNOTES

- 1/ Baur also "requests that if the Honorable Court finds fault with petitioners [sic] presentation of these matters that the court appoint legal council [sic] to assist him. This request is denied. This Court has had an opportunity to examine Baur's Petition, as well as his subsequent pleadings, and, as a result, finds that he has adequately presented his point of view in this cause. Significantly, this Court does not believe that Baur has been, or will be, prejudiced by the absence of legal counsel in this matter. However, it should be noted that immediately following the filling of the instant Petition and prior to the assessment of Baur's ability to articulate his legal interests, as mentioned above, this Court requested a Magistrate of this Court to seek and appoint an attorney to represent him in the case. On June 8, 1988, the Magistrate, through his clerk, reported that all of the counsel, whom he had contacted pursuant to the directive of this court, had declined to serve.
- 2/ These institutions have been identified by Baur as Dearborn Bank and Trust, Wayne Westland Credit Union, Public Service Credit Union, J.C. Penny Company, J.L. Hudson Corporation, TRW Corporation, and Sears, Roebuck and Company.
- 3/ Petition at 1, para. 3.
- 4/ Id. para. 5.
- 5/ Id. at 2, para. 7.

6/ Id.

7/ Brief in Support of Motion [sic] to Quash Summons at 8. Baur filed "Interrogatories" and a "Motion and Brief for Discovery" along with the Complaint on the same date, in which he asked for, among other things, (1) the Identities of the investigating agents, (2) the date when the investigation began, (3) the date when the office of Regional Counsel referred the matter for prosecution, and (4) the nature of any contacts, relating to and during the investigation, between the investigating agents and officials of the Justice Department. Baur's discovery motion is denied. although a limited amount of discovery is permitted under the Tax Equity and Fiscal Responsibility Act of 1982, such information would not be sufficient to defeat the Government's motion for dismissal, inasmuch as all of Baur's well pleaded facts were accepted as true. The Government files its opposition to Baur's application for discovery on May 9, 1988.

8/ Baur's motion is without merit and must be denied. He incorrectly cites Fed. R. Civ. P. 6(e) as the basis for his contention that "Defendant was required ... to provide answer within twenty three (23) days." Although Baur correctly relied upon Fed. R. Civ. P. 12, he apparently overlooked section (a) which, inter alia, states that "[t]he United States or an officer or agency thereof shall serve an answer to the complaint [or Petition to Quash] ... within 60 days after



service upon the United States attorney of the pleading in which the claim is asserted." Baur attests that he served the the Government (Attorney General, U.S. Attorney for the Eastern District of Michigan, and an IRS agent) by mail on March 14, 1988. The Government filed a responsive pleading within the above-mentioned time period on May 9, 1988. Even if the Government had not filed within the 60 day limitation, the result would be the same because there is not evidence of, or claim if, prejudice by Baur. It should also be noted that Baur withdrew his application for default on May 9, 1988 in a "Notice to Withdraw Motion For Default Judgment."

9/ Government brief at 5.

10/ Supra at 8.

11/ Baur's motion at 5. Although this Court did not authorize Baur to file the amendment, it will evaluate the Government's dispositive motion as if his motion to amend had been granted.

12/ Baur's answer at 6.

13/ Supra at 6-7.

14/ Supra at n.2.

15/ Elissa L. Baur and Karen R. Baur, are Baur's current and former spouses, respectively. Transcript of meeting between Baur and special agents of the IRS on February 16, 1988 at 13 and 16, They were identified only in the summons that were directed to J.C. Penney Corporation, J.L. Hudson Corporation, and Sears Roebuck and

Company.

- 16/ U.S. v. Powell, 379 U.S. 48, 57-58 (1964); U.S. v. LaSalle National Bank, 437 U.S. 298, 313-314 (1978).
- 17/ See U.S. v. Powell, *supra*.
- 18/ Government's motion at 3-4.
- 19/ 564 F. Supp. 1209 (D.Del. 1983).
- 20/ Id. at 1211-1212.
- 21/ See Dennis v. U.S., 660 F. Supp. 870, 875 n.2 (C.D. ILL. 1987); Reed v. U.S., 592 F. Supp. 200, 203 (S.D. Ohio), appeal dismissed, 758 F. 2d. 653 (6th Cir. 1985).
- 22/ Id.
- 23/ See U.S. First National Bank of Pikeville, 274 F. Supp. 283 (E.D. Ky. 1967), aff'd per curiam, Justice v. U.S., 390 U.S. 199 (1968); U.S. v. Miller, 425 U.S. 435 (1976).
- 24/ 409 U.S. 322 (1973).
- 25/ Id. at 328.
- 26/ Fisher v. U.S., 425 U.S. 391 (1976); Couch v. U.S., *supra*; Harris v. U.S., 758 F.2d at 457-458; U.S. v. National State Bank, 454 F.2d 1249 (7th Cir. 1972); U.S. v. Devon Bank, 529 F. Supp. 40,42 (N.D. ILL. 1981).



COPY OF THE ORDER OF THE UNITED STATES
DISTRICT COURT EASTERN DISTRICT OF
MICHIGAN SOUTHERN DIVISION, ISSUED AND
FILED NOVEMBER 7, 1988

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Dennis R. Baur,

Plaintiff,

No.88-CV-70793-DT

v.

HON. JULIAN ABELE COOKE, JR.

UNITED STATES OF AMERICA,

Defendant.

Order

On June 14, 1988, this Court entered an Order in which it dismissed the above-captioned case for failure to state a claim under which relief could be granted. Fed. R. Civ. P. 12(b)(6).

On June 24, 1988, the Plaintiff, Dennis R. Baur, filed a "Motion and Brief for New Trial [or] Amendment of Judgment." Because Baur is a pro se litigant, this Court will construe the instant motion as



though it had been filed in accordance with applicable rules of practice, and treat the motion as one for reconsideration of the Order of Dismissal dated June 14, 1988. Rule 17(m), Local Rules, United States District Court for the Eastern District of Michigan.

Under Rule 17(m), one who seeks the reconsideration of an order of this Court must "demonstrate a palpable defect by which the Court and the parties have been misled [and show] that a different disposition of the case must result from a correction thereof."

In the instant motion and brief for new trial or amendment of judgment, Baur contends--as he did in his original petition to quash certain Internal Revenue Service summonses--that (a) he is a "non-taxpayer," (b) his wages are not income, and (c) he is therefore outside the scope of the nation's internal revenue laws.



Baur's arguments that his wages are not taxable income and that he is not a taxpayer are "tired arguments," Coleman v. Commissioner, 791 F. 2d. 68, 70 (7th Cir. 1986), which are so patently frivolous that "[w]e see no need to refute [them] with somber reasoning...; to do so might suggest that [they] have some colorable merit." Crain v. Commissioner, 733 F.2d 1417 (5th Cir. 1984). In Sisemore v. United States, 797 F.2d 268, 270-71 (6th Cir. 1986), the Court characterized the argument that wages are not income as "patently without merit," "frivolous," "vexatious," and "in bad faith." See also, e.g., Caspar v. Commissioner, 800 F.2d 902 (10th Cir. 1986); Connor v. Commissioner, 770 F.2d 17 (2d Cir. 1985); Perkins v. Commissioner, 746 f.2d 1187, 1188 (6th Cir. 1984); Beer v. Commissioner, 733 F.2d 435, 437 (6th Cir. 1984); Hallowell v. Commissioner, 744 F.2d



406 (5th Cir. 1984).

Baur argues, motion and brief for new trial or amendment of judgment at 16, that "[t]he Court can not allow the Internal Revenue Service to circumvent the Constitutional protections afforded American Citizens by allowing the IRS to play a game of semantics." After a thorough review of Baur's extensive filings in this case, this Court is compelled to conclude that it is Baur who plays the game of semantics. As the above-cited cases indicate, it is the law of the land that wages are income for internal revenue purposes. To assert otherwise is a frivolous and vexatious waste the federal courts' finite resources, which incidentally owe their existence to the obligatory contributions of the nations taxpayers.

Baur suggests, motion and brief for new trial or amendment of judgment at 20-

21. that in order to render a judgment in this case, the Court must state formal finding of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a). This assertion is incorrect. Rule 52(a) requires formal findings and conclusions only after a trial on the merits of a federal civil action. The Court's Order of June 14, 1988 granted the Governments motion to dismiss the instant cause for failure to state a claim upon which relief could be granted. Fed. R. Civ. P 12(b)(6).

Beyond the contentions addressed in this Order, the Court discerns no arguments in the instant motion which were not made in Baur's original petition. Nothing in Baur's "Motion and Brief for New Trial [or] Amendment of Judgment" persuades this Court that its Order of June 14, 1988, was palpably defective within the meaning of Local Rule 17(m).



Accordingly, Baur's motion must be denied.

IT IS SO ORDERED.

JULLIAN ABELE COOK, JR.
United States District Judge

Dated: NOV 07 1988



COPY OF ORDER OF THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT, ISSUED
AND FILED December 1, 1988, LEONARD
GREEN Clerk

Docket No. 88-1847

United States Court of Appeals
for the Sixth Circuit

Dennis Baur

Petitioner-Appellant,

v.

ORDER

UNITED STATES OF AMERICA

Respondent-Appellee.

Before: KENNEDY GUY and RYAN, Circuit
Judges.

This matter is before the Court upon
consideration of the respondent's motion
to dismiss the appeal for lack of
jurisdiction on the basis that the notice
of appeal was premature. The appellant
has responded.

Review of the record indicates that
the judgment of the district court was
entered on June 14, 1988. Petitioner
filed a motion seeking a new trial and
amendment of judgment on June 24, 1988,



which is construed as a Fed. R. Civ. P. 59(e) motion. Although the record fails to reflect a service date of the June 24 motion, petitioner has stated to this court in his response to the motion to dismiss that he served the Fed. R. Civ. P. 59(e) motion upon respondents the same day it was filed, June 24, 1988. Thus, it appears that the motion was served within the ten day period prescribed by Fed. R. Civ. P. 59(e) as computed by Fed. R. Civ. P. 6(a), and tolled the appeals period. Petitioner filed his notice of appeal on August 11, 1988.

This court lacks jurisdiction in the appeal. Fed. R. Civ. P. 4(a)(4) provides that a notice of appeal filed before the disposition of a timely Rule 59(e) motion "shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion..." A timely

notice of appeal is mandatory and jurisdictional. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 61 (1982); Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978).

It is ORDERED that the motion to dismiss be granted and the appeal be and hereby is dismissed. Rule 8, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

LEONARD GREEN
Clerk

THE FORGOING ORDER WAS SUBSEQUENTLY ISSUED
AS MANDATE: JANUARY 3, 1988
COST: NONE